

**THE HIGH COURT OF TRIPURA
AGARTALA**

MAC APP. NO.21 of 2011

Shri Priyalal Das,
S/O. Late. Manindra Chandra Das,
Resident of village- South Pulinpur,
P.O.- Hawaii Bari, P.S.- Teliamura,
District- West Tripura,

..... **Appellant.**

- Vs -

- 1. The Union of India,**
Represented by the Secretary to the
Government of India, Ministry of Home Affairs,
New Delhi.
- 2. The Director General,**
Border Security Force,
Head Quarters, CGE Complex,
Lodhi Road, New Delhi.
- 3. The Commandant,**
118 Bn. B.S.F., B. Coy, Paharinagar, Garuhills,
Tora, Meghalaya.
- 4. The Government of Manipur,**
Represented by the Chief Secretary
Government of Manipur, Imphal.
- 5. Mrs. Nithilesh Singh,**
W/O. Om Prakash Singh,
Thangai Bazar, Imphal.

..... **Respondents.**

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA**

For the appellant : Mr. A.L. Saha, Advocate,
For the respondent Nos.1 to 3 : Mr. A Roy Barman, CGC.
For the respondent No.4 : Ms. A.S. Lodh, Addl. GA.

Date of hearing and judgment : 16.07.2015
Whether fit for reporting : No.

JUDGMENT & ORDER(ORAL)

This appeal by the claimant is directed against the award, dated 22.12.2010, passed by the learned Motor Accident Claims Tribunal(Court No.3), West Tripura, Agartala, in Case No. T.S. (MAC) 258 of 2002, whereby the learned Tribunal awarded a sum of Rs.25,100/- as compensation in favour of the claimant-appellant. By means of this appeal, the claimant has prayed for enhancement of the compensation and has also prayed that liability be shifted upon the State of Manipur.

2. The admitted facts of the case are that the claimant along with many other officials of the Border Security Force(BSF) was detained to perform election duty in the State of Manipur. They were traveling in a vehicle(*truck*) bearing Registration No.MN-01-4131 driven by a civilian driver Mr. Amarjit Singh. This vehicle is, admittedly, owned by respondent No.5. It is also not disputed that the truck fell into a gorge and as a result of this accident three constables died and as many as fourteen constables including the petitioner sustained injuries.

3. The petitioner filed the claim petition and initially he had only impleaded the Union of India, the Director General of BSF and the Commandant of his unit as respondents in the claim petition. Later the State of Manipur was also added as a party and finally, the respondent No.5 owner of the offending vehicle was also added as a party. In the claim petition it is only stated that the claimant was traveling from Tora, Meghalaya to Manipur on election duty. It is further alleged that from Tora to Nagaland the petitioner traveled by a BSF vehicle and thereafter he was traveling by the *truck* in question which was arranged by the opposite parties for the Assembly Election of Manipur. This is all that has been stated in the claim petition. There is no allegation that the *truck* had been requisitioned by the State of Manipur for election duties. The State of Manipur filed reply and denied the allegations. The learned Tribunal assessed the compensation at Rs. 25,100/- and held the owner of the vehicle alone liable to pay this amount. All the other respondents were exonerated from paying the same.

4. Mr. A.L. Saha, learned counsel for the appellant, has relied on the judgment of the Apex Court in ***Rajasthan State Road Transport Corporation V. Kailash Nath Kothari and others, AIR 1977 SC 3444*** and submits that applying the ratio of the said case the State of Manipur should also be held liable to pay the compensation.

5. At the outset, I may state that as far as the Union of India and BSF are concerned, there is not a single allegation worth the name either in the claim petition or in the evidence against

them. With regard to the State of Manipur, the only allegation is that it had arranged the vehicle. Even the Union of India in its reply has stated that the vehicle was arranged by the State of Manipur. That does not mean that the State of Manipur is liable. To hold the State of Manipur liable some evidence should have been led to show that the State of Manipur had complete control over the vehicle. There is no allegation in the petition that the State of Manipur had complete control over the vehicle.

6. In ***Rajasthan State Road Transport Corporation's*** case the Apex Court held that normally it is only the owner of the vehicle which is liable but in the case before the Apex Court the '*bus*' was hired by the Rajasthan State Road Transport Corporation(RSRTC) and was being run on a route permit for which had been granted in favour of the RSRTC. The Apex Court further held that the *bus* could not have been plied on the said road except by the RSRTC which alone had the permit to ply a bus on that route. The conductor of the bus was an employee of the RSRTC. The passengers were paying fare to the RSRTC as per the rate prescribed by the RSRTC. The conductor received the fare from the passengers on behalf of the RSRTC and the bus was on a long term hire with RSRTC along with the driver. The services of the driver were also totally under the control of the RSRTC and the driver was to follow the instructions of the conductor who was an employee of the RSRTC. It is in this context that the Apex Court held that the RSRTC is liable to pay the compensation. If the plea of Mr. Saha was to be accepted it would lead to very very strange consequences.

Supposing a lawyer hires a *taxi* and his client or clerk is traveling in the *taxi*. Can the lawyer be held liable to pay the compensation? The obvious answer is 'No'.

7. The cases of requisition of vehicle are different. Where a vehicle is requisitioned by a department then the vehicle is under the control of the department and then the department would be liable. Unfortunately, in this case there is not a shred of evidence to show that the vehicle in question was requisitioned. It is urged by Mr. Saha that a presumption may be drawn that the vehicle was requisitioned because admittedly, the vehicle was on election duty. I am afraid the Court cannot decide cases on the basis of surmises, conjectures and presumptions. To draw such a presumption some evidence should have been led by the claimant and if that initial burden had been discharged by the claimant to prove that the vehicle was in fact requisitioned by the State of Manipur, something could have been said.

8. In the present case the State of Manipur has not only filed reply it has also filed written arguments in the trial Court and in both the written reply and arguments it has stated that the vehicle was never requisitioned by it and was not even hired by it. Arranging a vehicle is different. The vehicle may have been arranged by the State of Manipur but that would not mean that the State of Manipur was having exclusive control over the vehicle.

9. As far as quantum is concerned, I am of the considered view that the award is slightly on the lower side because of two factors that (i) the claimant has been awarded only the exact

amount which has not been reimbursed to him and (ii) he has not been awarded any amount for attendant charges etc. Therefore, I enhance the amount from Rs.25,100/- to Rs.40,000/-. The claimant shall also be entitled to interest @ 7.5% per annum on the entire amount of compensation from the date of filing of the claim petition till payment/deposit of the same. However, the liability to pay this amount shall be only of the owner, respondent No.5 and not of the other respondents.

10. The appeal is disposed of. Send down the LCRs forthwith.

CHIEF JUSTICE

Sabyachi Ghosh